



April 5, 2005

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## ENGROSSED SENATE BILL No. 8

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DIGEST OF SB 8 (Updated April 4, 2005 12:38 pm - DI 107)

**Citations Affected:** IC 34-6; IC 34-57.

**Synopsis:** Arbitration in family law. Specifies the procedures for family law arbitration cases. (The introduced version of this bill was prepared by the child custody and support advisory committee.)

**Effective:** July 1, 2005.

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### Ford, Broden, Heinold, Zakas

(HOUSE SPONSORS — DUNCAN, THOMAS, SUMMERS, POND)

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January 4, 2005, read first time and referred to Committee on Judiciary.  
January 13, 2005, amended, reported favorably — Do Pass.  
January 18, 2005, read second time, ordered engrossed.  
January 19, 2005, engrossed.  
January 20, 2005, read third time, passed. Yeas 41, nays 1.

#### HOUSE ACTION

March 7, 2005, read first time and referred to Committee on Judiciary.  
April 4, 2005, amended, reported — Do Pass.

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ES 8—LS 6006/DI 107+



April 5, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 8

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-6-2-44.7 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: **Sec. 44.7. "Family law arbitrator", for purposes of**  
4 **IC 34-57-5, means:**

5 (1) **an attorney certified as a family law specialist in Indiana**  
6 **by an independent certifying organization that is approved**  
7 **and monitored under Rule 30 of the Rules for Admission to**  
8 **the Bar;**

9 (2) **a private judge qualified under Rule 1.3 of the Indiana**  
10 **Supreme Court Rules for Alternative Dispute Resolution;**

11 (3) **an individual who is a former magistrate or commissioner**  
12 **of an Indiana court of record; or**

13 (4) **an attorney licensed to practice law in Indiana who is**  
14 **agreed upon by both parties in a family law arbitration.**

15 SECTION 2. IC 34-57-5 IS ADDED TO THE INDIANA CODE AS  
16 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
17 1, 2005]:

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**Chapter 5. Family Law Arbitration**

**Sec. 1. This chapter is applicable only to the family law matters described in section 2 of this chapter and does not apply to any other type of arbitration. An appellate court opinion interpreting or construing this chapter has precedential value only for family law arbitrations and does not apply to any other type of arbitration.**

**Sec. 2. (a) In an action:**

**(1) for the dissolution of a marriage;**

**(2) to establish:**

**(A) child support;**

**(B) custody; or**

**(C) parenting time; or**

**(3) to modify:**

**(A) a decree;**

**(B) a judgment; or**

**(C) an order;**

**entered under IC 31;**

**both parties may agree in writing to submit to arbitration by a family law arbitrator.**

**(b) If the parties file an agreement with a court to submit to arbitration, the parties shall:**

**(1) identify an individual to serve as a family law arbitrator; or**

**(2) indicate to the court that they have not selected a family law arbitrator.**

**(c) Each court shall maintain a list of attorneys who are:**

**(1) qualified; and**

**(2) willing to be appointed by the court;**

**to serve as family law arbitrators.**

**(d) If the parties indicate that they have not selected a family law arbitrator under subsection (b)(2), the court shall designate three (3) attorneys from the court's list of attorneys under subsection (c). The party initiating the action shall strike one (1) attorney, the other party shall strike one (1) attorney, and the remaining attorney is the family law arbitrator for the parties.**

**(e) In a dissolution of marriage case, the written agreement to submit to arbitration must state that both parties confer jurisdiction on the family law arbitrator to dissolve the marriage and to determine:**

**(1) child support, if there is a child of both parties to the marriage;**

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- (2) custody, if there is a child of both parties to the marriage;
- (3) parenting time, if there is a child of both parties to the marriage; or
- (4) any other matter over which a trial court would have jurisdiction concerning family law.

Sec. 3. Unless both parties agree in writing to repudiate the agreement, an agreement to submit to arbitration by a family law arbitrator under this chapter is:

- (1) valid;
- (2) irrevocable; and
- (3) enforceable;

until the judgment is entered in the matter in which arbitration has taken place.

Sec. 4. For arbitration to take place under this chapter, at least one (1) of the parties must have been:

- (1) a resident of Indiana; or
- (2) stationed at a United States military installation in Indiana;

for at least six (6) months immediately preceding the filing of the petition or cause of action.

Sec. 5. A family law arbitrator shall comply with the:

- (1) child support; and
- (2) parenting time;

guidelines adopted by the Indiana supreme court in family law arbitration if there is a child of both parties to the marriage.

Sec. 6. (a) A record of the proceeding in family law arbitration may be requested by either party if written notice is given to the family law arbitrator not more than fifteen (15) days after the family law arbitrator has been selected.

(b) Written notice under subsection (a) must specify the requested manner of recording and preserving the transcript.

(c) The family law arbitrator may select a person to record any proceedings and to administer oaths.

Sec. 7. (a) Except as provided in subsection (b), the family law arbitrator shall make written findings of fact and conclusions of law not later than thirty (30) days after the hearing.

(b) If both parties consent, the period for the family law arbitrator to make written findings of fact and conclusions of law may be extended to ninety (90) days after the hearing.

(c) The family law arbitrator shall send a copy of the written findings of fact and conclusions of law to:

- (1) all parties participating in the arbitration; and

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(2) the court.

(d) After the court has received a copy of the findings of fact and conclusions of law, the court shall enter:

(1) judgment; and

(2) an order for an entry on the docket regarding the judgment.

Sec. 8. (a) In a dissolution of marriage case, the family law arbitrator shall:

(1) divide the property of the parties, regardless of whether the property was:

(A) owned by either party before the marriage;

(B) acquired by either party in his or her own right:

(i) after the marriage; and

(ii) before final separation of the parties; or

(C) acquired by their joint efforts; and

(2) divide the property in a just and reasonable manner by:

(A) division of the property in kind;

(B) setting the property or parts of the property over to one (1) of the parties and requiring either party to pay an amount, either in gross or in installments, that is just and proper;

(C) ordering the sale of the property under the conditions the family law arbitrator prescribes and dividing the proceeds of the sale; or

(D) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.

(b) The division of marital property under this section must comply with IC 31-15-7-5.

Sec. 9. In a dissolution of marriage case, at least sixty (60) days after the petition or cause of action is filed, the family law arbitrator may enter a summary dissolution decree without holding a hearing if verified pleadings have been filed with the family law arbitrator, signed by both parties, containing:

(1) a written waiver of hearing; and

(2) either:

(A) a statement that there are no contested issues in the action; or

(B) a written agreement made in accordance with IC 31-15-2-7 that settles any contested issues between the

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1 parties.

2 **Sec. 10. A family law arbitrator may modify an award after**  
 3 **making written findings of fact and conclusions of law if:**

4 (1) a party makes a fraudulent misrepresentation during the  
 5 arbitration;

6 (2) the family law arbitrator is ordered to modify the award  
 7 on remand; or

8 (3) both parties consent to the modification.

9 **Sec. 11. An appeal may be taken after the entry of judgment**  
 10 **under section 7(d) of this chapter as may be taken after a judgment**  
 11 **in a civil action.**

12 **Sec. 12. (a) Except as provided in subsection (b), fees for the**  
 13 **family law arbitrator shall be shared equally by both parties unless**  
 14 **otherwise agreed in writing.**

15 (b) The family law arbitrator may order a party to pay:

16 (1) a reasonable amount for the cost to the other party of:

17 (A) maintaining; or

18 (B) defending;

19 any proceeding under this chapter; and

20 (2) attorney's fees, including:

21 (A) amounts for legal services provided; and

22 (B) costs incurred:

23 (i) before the commencement of the proceedings; or

24 (ii) after entry of judgment.

25 (c) Fees for the family law arbitrator shall be paid not later than  
 26 thirty (30) days after the court enters judgment.

27 **Sec. 13. The Indiana Supreme Court Rules for Alternative**  
 28 **Dispute Resolution apply to family law arbitration in all matters**  
 29 **not covered by this chapter.**

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## SENATE MOTION

Madam President: I move that Senator Broden be added as coauthor of Senate Bill 8.

FORD

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 COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 8, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 41, after "7." insert "(a)".

Page 4, between lines 21 and 22, begin a new paragraph and insert:

**"(b) The division of marital property under this section must comply with IC 31-15-7-5."**

and when so amended that said bill do pass.

(Reference is to SB 8 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 1.

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 SENATE MOTION

Madam President: I move that Senator Heinold be added as coauthor of Engrossed Senate Bill 8.

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 SENATE MOTION

Madam President: I move that Senator Zakas be added as coauthor of Engrossed Senate Bill 8.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 8, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 10, delete "or".

Page 1, line 12, delete "record." and insert "**record; or**

**(4) an attorney licensed to practice law in Indiana who is agreed upon by both parties in a family law arbitration."**

Page 1, line 17, delete "(a)" and insert "**This chapter is applicable only to the family law matters described in section 2 of this chapter and does not apply to any other type of arbitration. An appellate court opinion interpreting or construing this chapter has precedential value only for family law arbitrations and does not apply to any other type of arbitration.**

**Sec. 2. (a)".**

Page 2, line 40, delete "2." and insert "**3.**".

Page 3, line 6, delete "3." and insert "**4.**".

Page 3, line 13, delete "4." and insert "**5.**".

Page 3, line 18, delete "5." and insert "**6.**".

Page 3, line 26, delete "6." and insert "**7.**".

Page 3, line 41, delete "7." and insert "**8.**".

Page 4, line 24, delete "8." and insert "**9.**".

Page 4, line 36, delete "9." and insert "**10.**".

Page 5, line 1, delete "10." and insert "**11.**".

Page 5, line 2, delete "6(d)" and insert "**7(d)**".

Page 5, line 4, delete "11." and insert "**12.**".

Page 5, line 19, delete "12." and insert "**13.**".

and when so amended that said bill do pass.

(Reference is to SB 8 as printed January 14, 2005.)

FOLEY, Chair

Committee Vote: yeas 8, nays 1.

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